



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 18 2013

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Brian Lewis, President  
Scrappy Thomas, Inc.  
1155 Pebbledale Road  
Mulberry, Florida 33860

SUBJ: Scrappy Thomas, Inc.  
Executed Consent Agreement and Final Order  
TSCA-04-2010-2900

Dear Mr. Lewis:

Please find enclosed a copy of the fully executed Consent Agreement and Final Order (CAFO) for Scrappy Thomas, Inc. The CAFO was effective upon filing.

Thank you for your cooperation in this matter. If you have any questions, please contact Stanley Tam, of this office, by telephone at (404) 562-8577 or by email at [tam.stanley@epa.gov](mailto:tam.stanley@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "CESAR A. ZAPATA".

Cesar A. Zapata, Chief  
RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

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In the Matter of: )  
)  
Scrappy Thomas, Inc. ) Docket No. TSCA-04-2010-2900  
1155 Pebbledale Road )  
Mulberry, Florida 33860 )  
)  
Respondent )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Resource Conservation and Recovery Act (RCRA) Division, United States Environmental Protection Agency (EPA), Region 4. Respondent is Scrappy Thomas, Inc.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has delegated this authority to the Director of the RCRA Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the RCRA Division has the authority to commence an enforcement action as the Complainant in this matter and has the authority to sign Consent Agreements

memorializing settlements between the EPA and Respondent.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to Section 6(e) of TSCA, 15 U.S.C. § 2605, the Administrator of EPA promulgated rules in 40 C.F.R. Part 761 pertaining to Polychlorinated Biphenyls (PCBs). Failure to comply with any such rule constitutes a violation of Section 15 of TSCA, 15 U.S.C. § 2614. Any person who violates a provision of Section 15 of TSCA may be assessed a penalty of up to \$27,500 for each such violation occurring between January 30, 1997, and March 15, 2004, in accordance with Section 16(a) of TSCA and 40 C.F.R. Part 19, as amended. For each such violation occurring between March 15, 2004, and January 12, 2009, a penalty of up to \$32,500 may be assessed. For each such violation occurring after January 12, 2009, a penalty of up to \$37,500 may be assessed. Each day a violation continues may constitute a separate violation.
5. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Stanley Tam  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-8577

### **III. Specific Allegations**

6. Respondent is a generator of PCB waste operating in the State of Florida and is a “person” as defined in 40 C.F.R. § 761.3.
7. On April 24 and April 27, 2009, the Florida Department of Environmental Protection (FDEP) conducted a hazardous waste inspection at 1155 Pebbledale Road, Mulberry, Florida, where Respondent was operating its business. During the inspection, FDEP observed thirteen (13) 55-gallon drums and one (1) 500-gallon portable tank being stored in a metal building with a concrete floor on property owned and/or leased by Respondent. FDEP also observed that the drums were surrounded by tape that had a label stating “Suspected PCB Oil.” FDEP directed Respondent to determine the contents of the drums and tank.
8. On or about April 28, 2009, Respondent’s consultant, Common Ground Environmental (Common Ground), collected samples of liquids/sludge from two of the 13 drums. Analytical results showed that one of the drums had a PCB concentration of 565,072 parts per million (ppm), and the other drum had a PCB concentration of 3,166 ppm.
9. On or about May 6, 2013, FDEP asked Common Ground if analytical results from the sampling had been received and whether samples had been collected from the 500-gallon tank. Common Ground advised FDEP that it was unaware of a 500-gallon tank being present at Respondent’s facility. FDEP subsequently learned that Respondent had removed the tank from the building and moved it to its maintenance shop, and that Respondent had arranged to ship 300 gallons of liquid in the tank through a used oil transporter for shipment to a used oil processing facility without first sampling the contents of the tank for PCBs.
10. FDEP instructed Respondent to take steps to stop the truck from delivering its contents to the used oil facility. As a result, the used oil tanker truck containing the contents from Respondent’s

tank, along with approximately 1,800 gallons of used oil, was stopped before it reached the used oil processing facility. The contents of the truck were then sampled and found to have a PCB concentration of 2,400 ppm. Subsequently, the contents of the tanker truck were placed into totes and delivered back to Respondent where they were stored. The tanker truck was decontaminated.

11. On or about May 7, 2009, FDEP referred the matter to EPA. On May 14, 2009, EPA inspected Respondent's place of business. During the inspection, EPA observed the totes containing the contents of the used oil tanker in several locations around the property. The totes were properly marked with the required PCB marking for PCB containers. EPA also observed that the 13 drums had been moved out of the metal building, and the liquid and sludge contents of the drums, many of which were in poor condition, had been, and were in the process of being transferred to other drums.
12. On May 19, 2011, Respondent's consultant, Common Ground, collected ten samples from soils on the surface of the concrete pad. These samples were analyzed for PCB content. The results of the analysis indicated that four of the samples had PCB concentrations greater than the required cleanup level of 25 ppm specified in 40 C.F.R. § 761.61(a)(4). The highest PCB concentration was 9,429 ppm.
13. 40 C.F.R. § 761.40(a)(1) requires that each container used to store PCBs must be marked with an M<sub>L</sub> as illustrated in Figure 1 in 40 C.F.R. § 761.45(a). At the time of the FDEP inspection, the 13 drums and one 500-gallon tank (hereinafter sometimes collectively referred to as PCB Containers) were not marked with the required a M<sub>L</sub> marking. Therefore, Respondent violated 40 C.F.R. § 761.40(a)(1).
14. 40 C.F.R. § 761.40(a)(10) requires that each storage area used to store PCBs and PCB items for disposal be marked with an M<sub>L</sub> mark as illustrated in Figure 1 in 40 C.F.R. § 761.45(a). At the

time of the FDEP inspection, the metal building being used to store the PCB Containers was not marked with the required M<sub>L</sub> mark. Therefore, Respondent violated 40 C.F.R. § 761.40(a)(10).

15. 40 C.F.R. § 761.60(a) requires that PCB liquids with concentrations greater than or equal to 50 ppm must be disposed of in an EPA-approved incinerator which complies with 40 C.F.R. § 761.70, except that PCB liquids at concentrations  $\geq 50$  ppm and  $< 500$  ppm may be disposed in a high efficiency boiler in accordance with 40 C.F.R. § 761.71(b). The analysis of the soil samples collected by Common Ground from the concrete pad showed that the soils had PCB concentrations as high as 9,429 ppm, indicating that a PCB spill had occurred from one or more of the PCB Containers but was not properly cleaned up. Respondent provided no evidence to FDEP or to EPA that any liquid PCBs from the spill area had been disposed of in an incinerator. Therefore, Respondent violated 40 C.F.R. § 761.60(a).
16. 40 C.F.R. § 761.65(a)(1) applies to the storage and disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater and requires that PCB waste shall be disposed within 1 year from the date the waste was determined to be PCB waste and the decision was made to dispose of it. During its inspection, FDEP observed that the PCB Containers were rusted and corroded. The poor condition of these containers indicated that they had been stored at the facility for more than one year. Therefore, Respondent violated 40 C.F.R. § 761.65(a)(1).
17. 40 C.F.R. § 761.65(b)(1)(ii) requires that any facility used for the storage of PCBs and PCB Items must have a floor that has continuous curbing with a six-inch high curb and the curbing and floor must provide a containment volume equal to at least two times the internal volume of the largest PCB container. At the time of FDEP's inspection, Respondent was storing the PCB Containers on a concrete pad that did not have continuous curbing and did not provide a

containment volume capable of handling any size spill. Therefore, Respondent violated 40 C.F.R. § 761.65(b)(1)(ii).

18. 40 C.F.R. § 761.65(c)(5) requires that all PCB Items held in storage shall be checked for leaks at least once every thirty days and any leaking PCB Items and their contents shall be transferred immediately to properly marked non-leaking containers. Respondent has produced no evidence proving that it inspected the drums or tank for leaks at least once every thirty days. As referenced in Paragraph 15, the soil samples from the surface of the concrete pad indicated that at least one of the containers had leaked. Therefore, the contents of one or more leaking container were not transferred to non-leaking containers. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(5).
19. 40 C.F.R. § 761.65(c)(8) requires that PCB Items must be marked with the date when they were removed from service for disposal. At the time of the FDEP inspection, the PCB Containers were not marked with the date(s) the PCB liquid waste was removed from service for disposal. Therefore, Respondent violated 40 C.F.R. § 761.65(c)(8).
20. 40 C.F.R. § 761.125(b)(1)(iii) requires facilities to implement cleanup of spills which involve less than 1 pound of PCBs within 48 hours of becoming aware of the spill. Soil samples from the surface of the concrete pad were collected by Common Ground on May 19, 2009. Analysis of these soil samples was completed on May 26, 2009 and showed the presence of less than 1 pound of PCBs. Shortly thereafter, Common Ground notified Respondent of the results. As of September 1, 2009, Respondent had not implemented cleanup of the spill of PCBs onto the soils on the concrete pad. Therefore, Respondent violated 40 C.F.R. § 761.125(b)(1)(iii).
21. 40 C.F.R. § 761.180(a) requires each owner or operator of a facility, other than a commercial storer or a disposer of PCB waste, using or storing at any one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB Transformers, or 50 or

more PCB Large High or Low Voltage Capacitors shall develop and maintain at the facility, all annual records and the written annual document log of the disposition of PCBs and PCB Items. During FDEP's inspection, the Respondent could not produce any annual records or annual document logs of the disposition of PCB Containers, PCB liquids or PCB equipment. Therefore, Respondent violated 40 C.F.R. § 761.180(a).

22. 40 C.F.R. § 761.205(a)(2) requires all generators of PCB waste to notify EPA of their PCB waste activities using Form 7710-53 prior to engaging in PCB waste handling activities. Respondent did not notify EPA of its status as a generator of PCB waste on Form 7710-53. This form should have been submitted when PCB waste activities first occurred at the Respondent's facility. Therefore, Respondent violated 40 C.F.R. § 761.205(a)(2).
23. 40 C.F.R. § 761.207(a) requires that generators who relinquish control over PCB wastes by offering for transport by a vehicle owned by another person for off-site disposal shall prepare a manifest on EPA Form 8700-22. On or about May 6, 2009, Respondent offered approximately 300 gallons of liquid PCB waste to Synergy Recycling of Central Florida for transport. Respondent declared the PCB waste to be used oil and did not prepare the required hazardous waste manifest for the shipment of this PCB waste. Therefore, Respondent violated 40 C.F.R. § 761.207(a).

#### **IV. Consent Agreement**

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
25. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.



26. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of TSCA.
28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the Respondent's responsibility to comply with said laws and regulations.
29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.

#### **V. Final Order**

30. Respondent consents to the payment of a civil penalty in the amount of **NINETEEN THOUSAND DOLLARS (\$19,000.00)**, plus interest of 1.00% per annum, payable as follows:
  - a. The civil penalty in the amount of **NINETEEN THOUSAND DOLLARS (\$19,000.00)** may be paid in four (4) payments for complete payment of the entire penalty, including interest. Respondent's first payment shall be due and paid within thirty (30) days from the effective date of this CAFO and subsequent payments will be due in ninety (90) day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **\$19,120.24**.
  - b. Respondent shall make payments in accordance with the following schedule:

<b>Payment Number</b>	<b>Payment shall be made no later than</b>	<b>Principal Amount</b>	<b>Interest Amount</b>	<b>Total Payment Amount</b>
1	Thirty (30) calendar days following the effective date of this CAFO.	\$4,732.03	\$48.03	\$4,780.06
2	One Hundred and Twenty (120) calendar days following the effective date of this CAFO.	\$4,744.39	\$35.67	\$4,780.06
3	Two Hundred and Ten (210) calendar days following the effective date of this CAFO.	\$4,755.72	\$24.34	\$4,780.06
4	Three Hundred (300) calendar days following the effective date of this CAFO.	\$4,767.86	\$12.20	\$4,780.06

31. Respondent shall remit the civil penalty by either (1) a cashier's or certified check made payable to the "Treasurer, United States of America," or (2) wire transfer, in accordance with instructions provided below. If payment is made by check through the U.S. Postal Service, Respondent shall send the check to the following address:

U.S. Environmental Protection Agency  
 Fines and Penalties  
 Cincinnati Finance Center  
 PO Box 979077  
 St. Louis, Missouri 63197-9000

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

For payment submittal by any overnight delivery service (U.S.P.S., Fed Ex, UPS, DHL, etc.), please use the following address:

U. S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, Missouri 63101  
(314) 425-1818

Wire Transfer Instructions

Payment by wire transfer, in lieu of a cashier's or certified check, if desired, should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045

32. At the time of each installment payment, Respondent shall send a separate copy of each check and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Stanley Tam  
RCRA and OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

and

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

33. If Respondent fails to make a payment in accordance with the schedule set forth above, the entire unpaid balance of the penalty and accrued interest shall be then due and payable and Respondent shall be liable for making immediate payment of the entire remaining principal balance of the civil penalty along with any other penalties and interest accrued up to the date payment is made. In addition, in the event of any such failure or default, Respondent shall be liable for, and agrees to pay administrative handling charges and late payment penalty charges as described below.
34. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
35. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may avoid the payment of interest by electing to pay the entire civil penalty of NINETEEN THOUSAND DOLLARS (\$19,000.00) within thirty (30) calendar days after the effective date of this CAFO. In addition, at any time after making the initial payment Respondent may elect to pay the entire principal balance remaining together with any penalties and interest accrued up to the date such payment is made.
36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 1311, the EPA is authorized to assess interest and penalties on debts owed to the United States and to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty payments are not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount due but not paid

within ninety (90) days of the due date.

37. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
39. This CAFO shall be binding upon the Respondent, its successors and assigns.
40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.


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**VI. Effective Date**

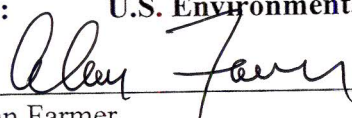
41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**


**Respondent:** Scrappy Thomas, Inc.  
**Docket No.:** TSCA-04-2010-2900

By:  (Signature) Date: 9-5-2012  
Name: Brian Lewis (Typed or Printed)  
Title: President (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 9/16/2013  
G. Alan Farmer  
Director  
RCRA Division  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 17 day of Sept, 2013.

By:   
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed a true and correct copy of the foregoing Consent Agreement and Final Order (CAFO) for Scrappy Thomas, Inc. Docket Number TSCA-04-2010-2900, on 9-18, and on 9-18, and served the parties listed below in the manner indicated:

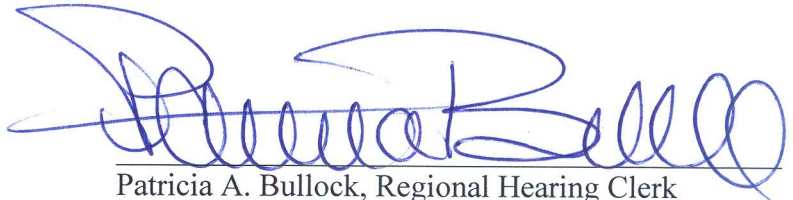
Ellen Rouch (via EPA's internal mail)  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)  
Senior Attorney  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Quantindra Smith (via EPA's internal mail)  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Brian Lewis (via Certified Mail  
Return Receipt requested)  
President  
Scrappy Thomas, Inc.  
1155 Pebbledale Road  
Mulberry, Florida 33860

Date: 9-18-13



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404) 562-9511